Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte MICHAEL JESCHKE
and
IVAR MORTENSEN

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Appeal No. 2002-2106
Application No. 09/313,359

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ON BRIEF

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Before HAIRSTON, KRASS, and FLEMING, ***Administrative Patent Judges***.

FLEMING, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 4, 7, 9 and 10. Claims 5, 6, and 8 are objected to for being dependent upon a rejected claim.

Invention

The invention relates to a mobile cellular communications system which contains a number of base stations which communicate with mobile stations. See page 1 of Appellants' specification. The invention addresses the problem where two base stations communicate simultaneously with the same mobile station. The power transmitted by the base stations must be adapted as quickly as possible to changes in channel characteristics. The mobile station sends to all base stations serving it a transmit power control command instructing them to change their transmitted powers, namely to raise or lower the transmitted power level by a predetermined amount. See pages 1 and 2 of Appellants' specification. The invention is predicated on the recognition of the following problem which arises if the transmit power control command is detected in error. If one of the base stations receives the transmit power command incorrectly, it will change its transmitted power incorrectly as compared with those base stations which receive the transmit power command correctly. Accordingly, the transmitted power levels will drift apart, which is called "random walk." To prevent this drift, the invention proposes to preset for each

base station an individual target value from which the transmitted power level should not deviate on a long-term average. See page 2 of Appellants' specification. Fig. 2a shows the structure of a mobile communications system according to the invention. The mobile communications system contains a number of base stations of which only two, NB1 and NB2, are shown. These two base stations NB1 and NB2 are interconnected by a control network and communicate simultaneously with a mobile station UE. See page 4 of Appellants' specification. Each of the two base stations NB1 and NB2 changes its transmitted power using the method according to the invention, in which target values TV1 and TV2 are preset by the first base station controller SRNC for base stations NB1 and NB2, respectively. See page 5 of Appellants' specification. Fig. 3 is a flowchart showing the steps of a method 100 for changing the transmitted power of a base station. In the first step 110, the base station controller SRNC presets a target value TV1 for the base station NB1. See page 6 of Appellants' specification. In step 120, a transmit power command is transmitted from the mobile station UE to the two base stations NB1 and NB2. In step 130, the transmitted power is

changed solely by taking account of the received command transmit power control. See pages 7 and 8 of Appellants' specification. In step 140, the base station NB1 additionally changes its transmitted power by taking into account the target value TV1 assigned to it. The target value is preset by the first station controller SRNC prior to the beginning of the flowchart. See page 8 of Appellants' specification.

Independent claim 1, present in the application, is representative of Appellants' claimed invention and is reproduced as follows:

> 1. A method (100) of changing the powers transmitted by at least two base stations (NB1, NB2) communicating simultaneously, at least temporarily, with a mobile station (UE) in a mobile communications system (MTS), said method (100) comprising the steps of: sending from the mobile station (UE) to the base stations (NB1, NB2) a command (TPC) instructing the base stations (NB1, NB2) to change their transmitted powers (120); changing the transmitted power in each (NB1) of the base stations in response to the command (TPC) (130); and additionally changing the transmitted power in each (NB1) of the base stations continuously in the direction of a presettable target value (TV1) (140).

References

The references relied on by the Examiner are as follows:

Nakano et al. (Nakano)	5,933,782	Aug. 3, 1999 (filed July 29, 1997)

Ozluturk	6,181,919	Jan. 30, 2001 (filed Nov. 20, 1998)
Kumar et al. (Kumar)	6,212,399	Apr. 3, 2001 (filed Mar. 6, 1998)

Rejections at Issue

Claims 1, 2, 9 and 10 stand rejected under 35 U.S.C. § 102 as being anticipated by Nakano. Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over Nakano in view of Kumar. Claim 4 stands rejected under 35 U.S.C. § 103 as being unpatentable over Nakano. Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over Nakano in view of Ozluturk. Throughout our opinion, we make reference to the briefs[1] and the answer for the respective details thereof.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of

[1] Appellants filed an appeal brief on May 28, 2002. Appellants filed a reply brief on October 15, 2002. The Examiner mailed out an Office communication on February 10, 2003, stating that the reply brief has been entered.

Appellants and the Examiner, for the reasons stated ***infra***, we reverse the Examiner's rejection of claims 1, 2, 9 and 10 under 35 U.S.C. § 102, and we reverse the Examiner's rejection of claims 3, 4 and 7 under 35 U.S.C. § 103.

Rejection Under 35 U.S.C. § 102

"Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention." ***RCA Corp. v. Applied Digital Data Sys., Inc.***, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), ***cert. dismissed***, 468 U.S. 1228 (1984), ***citing Kalman v. Kimberly-Clark Corp.***, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), ***cert. denied***, 465 U.S. 1026 (1984).

Appellants argue that the term "presettable target value" properly construed in accordance with the Appellants' specification, does not read on Nakano's disclosed "notified transmission power value." See pages 5-10 of the brief and the reply brief.

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the

claim." ***In re Hiniker Co.***, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998).

We note that Appellants' independent claim 1 recites "additionally changing the transmitted power in each (NB1) of the base stations continuously in the direction of a presettable target value (TV1)(140)." We note that Appellants' independent claim 9 recites "a transmit power controller (PCR) connected to the memory (MEM) for changing the transmitted power of the base station (NB1) in response to the command and for additionally changing the transmitted power continuously in the direction of the presettable target value (TV1)." Finally, we note that independent claim 10 recites "a transmit power controller (PCR) connected to the memory (MEM) for changing the transmitted power in response to the command (TPC) and for additionally changing the transmitted power continuously in the direction of the presettable target value (TV1)."

Appellants argue that the proper interpretation of the recited term "presettable" is the ordinary meaning. The Examiner refers to the Webster's Dictionary definition for "preset" which is defined as "to set beforehand." The Examiner argues that

Nakano discloses a communications system in which the exchange station notifies the base station of a transmission power value, and that the base station corrects its transmission power to match the notified transmission power value. The exchange station sets this notified transmission value based upon the comparison of the transmission power values reported from the base stations. The Examiner points to Nakano, column 18, line 66, through column 19, line 17. The Examiner argues that the notified transmission power value reads on the Appellants' claimed presettable target value because the notified power value is set before it is transmitted to the base station and used to correct transmission power. See page 4 of the Examiner's answer.

As our reviewing court states, "[t]he terms used in the claims bear a "heavy presumption" that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." ***Tex. Digital Sys., Inc. v. Telegenix, Inc.***, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002), ***cert. denied***, 123 S.Ct. 2230 (2003). "Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and

customary meaning is rebutted" (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." ***Tex. Digital Sys.***, 308 F.3d at 1204, 64 USPQ2d at 1819 ("[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty.") ***Id.*** (***citing Liebscher v. Boothroyd***, 258 F.2d 948, 951, 119 USPQ 133, 135 (CCPA 1958)("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results.")). "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning." ***Id.*** "Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." ***Id.***

Upon our review of Appellants' specification, we fail to find an expressed definition of the term "presettable." However, upon reviewing the specification, we find that the specification does put in context that the target value (TV1) is determined prior to sending from the mobile station to the base station a command instructing the base station to change their transmitted powers. So even using the ordinary meaning as proposed by the Examiner, we find that the claims require that the target value is set before the steps of sending from the mobile station to the base station a command instructing the base station to change its transmitted powers.

Turning to Nakano, we fail to find that the "notified transmission power value" is set before the mobile station sends the command instructing the base stations to change their transmitted powers. In fact, we find that this value is not determined until the exchange station compares the transmitted power values reported from the base stations after the request to change the power values from the mobile station. In particular, Nakano teaches that the seventh specific embodiment is a more specific embodiment based upon the fourth basic embodiments

described above. See Nakano, column 18, lines 51-56. Furthermore, Nakano teaches that the seventh specific embodiment configurations of the mobile station and the base station are substantially similar to those of Figs. 18 and 19 described above, but it is assumed that the base station control station 11 is functionally integrated into the exchange station 7 so that the control with respect to the base station control station function is to be realized by the control with respect to the exchange station. See Nakano, column 18, lines 57-64. Nakano teaches that the control signal (transmission power control command) is sent from the mobile unit first before correcting the transmission power of each of the base stations according to the seventh embodiment. See column 11, line 62, through column 12, line 30. Therefore, we fail to find that the Examiner properly found that Nakano's "notified transmission power value" reads on Appellants' claimed invention.

Rejections Under 35 U.S.C. § 103

For the rejections of claims 3, 4 and 7 under 35 U.S.C. § 103, we note that the Examiner has relied on Nakano for the teaching of "presettable target values" as recited in Appellants'

claims. Upon our review of Kumar and Ozluturk, we fail to find that these references teach this limitation. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

In view of the foregoing, we have not sustained the Examiner's rejection of claims 1, 2, 9 and 10 under 35 U.S.C. § 102. Furthermore, we have not sustained the Examiner's rejection of claims 3, 4 and 7 under 35 U.S.C. § 103.

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
ERROL A. KRASS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
MICHAEL R. FLEMING Administrative Patent Judge	)	

MRF:psb

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